

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court SDTX-Houston on the following ☒ Patents or ☐ Trademarks:


DOCKET NO. 4:12cv0366	DATE FILED 2/7/2012	U.S. DISTRICT COURT SDTX-Houston
PLAINTIFF Array Holdings, Inc		DEFENDANT Safoco Inc
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,089,531		Copy of complaint mailed with report
2 6,250,605		
3 6,450,477		
4 6,854,704		
5 7,028,986		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK DAVID J. BRADLEY	(BY) DEPUTY CLERK 	DATE FEB 08 2012
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

Piston Pneumatic Actuator, and Model APH Piston Hydraulic Actuator ("Subject Array Actuators") are outside of the scope of the claims of the Safoco Patents and outside the scope of the Settlement Agreement.

36. The Subject Array Actuators are outside of the terms of the Settlement Agreement.

PARTIES

37. Array Holdings Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business at 15900 Morales Road, Houston Texas 77032.

38. Safoco, Inc. is a corporation organized and existing under the laws of Texas, with its principal place of business at 11421-A Todd Road, Houston, TX 77055. Safoco may be served with process at its principle place of business.

JURISDICTION AND VENUE

39. Jurisdiction is conferred upon this judicial district pursuant to at least 15 U.S.C. §§15 and 26; and, 28 U.S.C. §§1331, 1337, 1338, and 1367.

40. Array's declaratory relief is brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, for patent non-infringement and invalidity arising under the patent laws of the United States, Title 35, U.S.C. § 1 *et seq* and for declaratory relief that the Settlement Agreement between Array and Safoco is vitiated and/or that the actuators Array now sells, rents or leases are outside of the scope of the Settlement Agreement. An actual, substantial, and continuing justiciable controversy exists between Array and Safoco, requiring a declaration of rights by this Court. The technology at issue generally involves gate valve actuators.

41. Safoco is subject to personal jurisdiction in this judicial district because Safoco has purposefully availed itself of the privilege of doing business in this judicial district and has

sufficient minimum contacts with Texas to render the exercise of jurisdiction over Safoco compatible with due process. Safoco, Inc. maintains its corporate headquarters in this judicial district and transacts business in Texas, including targeting sales and marketing of its products in this judicial district.

42. Venue is proper in this district pursuant to at least 15 U.S.C. §§15, 22 and 26; and, 28 U.S.C. §§1391 and 1400(b) because defendant transacts significant business in this district and defendant has its principle corporate office in this district. Additionally, a substantial part of the interstate trade and commerce involved and affected by the alleged violations of the antitrust laws was and is carried on in part within this district. Further, the acts complained of have had, and will have, substantial anticompetitive effects in this district.

TRADE AND COMMERCE

43. During all relevant time periods, Safoco marketed, distributed, and sold its actuators and licensed the Safoco Patents with the anticompetitive terms in a continuous and uninterrupted flow of intrastate and interstate commerce throughout the United States.

SAFOCO ENGAGES IN ILLEGAL TYING CONDUCT THROUGH THE SETTLEMENT AGREEMENT

44. For the purposes of this Complaint, the tied product is the grant of a license under the Safoco Patents for the sale, lease or rental of a product that is within the scope of the claims of the Safoco Patents, and the tying product is the requirement that licensees of the Safoco Patents pay a royalty on products regardless of whether those products constitute a design around or are even covered by the scope of the claims of the Safoco Patents. Thus, consumers, such as Array, who have licensed the Safoco Patents from Safoco will have no choice but to pay a royalty on all actuators sold whether or not the actuator is covered by the scope of the claims of the Safoco Patents.

45. After licensing the Safoco Patents from Safoco, consumers such as Array are locked into paying royalties on all actuators. They might want to design around or modify the products but to do so would be a breach of the Settlement Agreement and a fee and patent marking would be required regardless of whether the product was within the scope of the claims of the Safoco Patents.

ANTITRUST INJURY TO CONSUMERS AND COMPETITORS

46. Through the unlawful acts and practices described herein Safoco has harmed competition, consumers and innovation by at least causing consumers to pay supracompetitive prices for actuators in the Subject Actuator Market. Those practices, described herein, have also allowed Safoco to obtain and maintain illegal monopolies in the Products Market and Subject Actuator Market.

47. By preventing manufacturers and consumers from designing around the Safoco Patents or developing actuators outside of the scope of the claims of the Safoco Patents, Safoco has broadened the scope of the patent grant contained within the Safoco Patents beyond that which is statutorily allowed, in an anticompetitive manner, the effect of which has been to increase prices, stifle innovation, and damage both the public and Safoco's competitors, including Array.

48. The effect of the Settlement Agreement is to prevent Array from designing around the Safoco Patents or developing actuators outside of the scope of the claims of the Safoco Patents. Safoco has broadened the scope of the patent grant contained within the Safoco Patents beyond that which is statutorily allowed, in an anticompetitive manner, the effect of which has been to increase prices, stifle innovation, and damage both the public and Safoco's competitors.

49. Safoco's anticompetitive conduct has deterred the development of competing products, damaging consumers by depriving them of a choice of products with different and possibly superior sets of features.

COUNT I: TYING
(For Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1)
Violations Resulting from Unlawful Tying and Conspiracy

50. Plaintiff re-alleges and incorporates by reference each of the allegations set forth in paragraphs 1-49.

51. Safoco and the unwilling co-conspirator Array have substantial market power in the Subject Actuator Market.

52. All of these markets are for goods and not services.

53. There is no appropriate or legitimate business justification for Safoco's use of contract provisions to force manufacturers and/or consumers to pay a license fee on products not covered by the scope of the claims of the Safoco Patents that would counterbalance the clear anticompetitive effects of its tying conduct, including the foreclosure of competition in the Subject Actuator Market.

54. There is no appropriate or legitimate business justification for Safoco's use of contract provisions to force Array to pay a license fee on products not covered by the scope of the claims of the Safoco Patents that would counterbalance the clear anticompetitive effects of its tying conduct, including the foreclosure of competition in the Subject Actuator Market.

55. This unlawful conduct has harmed competition in that market, and has caused injury to every buyer of an actuator in the Subject Actuator Market. Prices in the Subject Actuator Market are higher than they would have been in a competitive market; the supply and selection of

products available is lower than it would be in a competitive market; and the number and effectiveness of competitors have been diminished by unlawful means.

56. The anticompetitive conduct described herein has damaged Plaintiff, as described in 15 U.S.C. §15, and is in violation of the Sherman Antitrust Act, 15 U.S.C. §1.

57. Plaintiff is entitled to a trebling of damages.

58. Plaintiff is entitled to a reasonable attorneys' fee and cost, which shall also be trebled.

COUNT II: MONOPOLIZATION
(For Violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. §2)
Violations Resulting from the Unlawful Acquisition or Maintenance
of Monopoly Power in the Subject Actuator Market

59. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-58.

60. Through the actions described herein, Safoco has willfully acquired and maintained monopoly power in the Subject Actuator Market. This conduct has harmed competition in that market, and has caused injury to every buyer of an actuator in the Subject Actuator Market by at least removing competition, reducing innovation and raising prices. Prices in the Subject Actuator Market are higher than they would be in a competitive market; the supply and selection of products available is lower than it would be in a competitive market; and the number and effectiveness of competitors have been diminished by Safoco's unlawful means.

61. There is no appropriate or legitimate business justification for the actions and conduct which have facilitated Safoco's monopolization of the Subject Actuator Market.

62. The anticompetitive conduct described herein has damaged Plaintiff, as described in 15 U.S.C. §15, and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

63. Plaintiff is entitled to a trebling of damages.

64. Plaintiff is entitled to a reasonable attorneys' fee and cost, which shall also be trebled.

COUNT III: ATTEMPTED MONOPOLIZATION
(For Violation of Section of the Sherman Antitrust Act, 15 U.S.C. §2)
Violations Resulting from Unlawful Attempted
Monopolization of the Subject Actuator Market

65. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-64.
66. Safoco has acted with specific intent to monopolize the Subject Actuator Market as is illustrated by its anticompetitive conduct including the illegal and usurious licensing terms and sham litigation against other Subject Actuator Market consumers and manufacturers.
67. There was and is a dangerous possibility that Safoco will succeed in its attempt to monopolize the Subject Actuator Market market because Safoco controls a large percentage of that market and has the ability and actually does exclude its competitors through use of anticompetitive contract provisions in its licensing agreements and sham litigation. Further success in excluding competitors from the Subject Actuator Market will allow Safoco to obtain an illegal monopoly over the Subject Actuator Market.
68. This conduct has harmed competition in that market, making the supply and selection of products available lower than it would be in a competitive market. Safoco's unlawful attempted monopolization has also reduced the number and effectiveness of competitors in the Subject Actuator Market and forced consumers to pay higher prices in the Subject Actuator Market than they would in a competitive market.
69. There is no appropriate or legitimate business justification for the actions and conduct which have facilitated Safoco's attempted monopolization of the Subject Actuator Market.
70. The anticompetitive conduct described herein, if not halted and abated, will damage Plaintiff, as described in 15 U.S.C. §15, and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

- 71. Plaintiff is entitled to a trebling of damages.
- 72. Plaintiff is entitled to a reasonable attorneys' fee and cost, which shall also be trebled.

ARRAY HAS STANDING AS AN ANTITRUST PLAINTIFF

- 73. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-72.
- 74. Array has standing as an antitrust Plaintiff because
 - (a) The Settlement Agreement Array signed to end patent litigation by Safoco against Array contains the terms that are harmful to Plaintiff;
 - (b) Safoco's conduct demonstrates an improper motive to dominate the Subject Actuator Market;
 - (c) an impermissible extension of a patent grant and unconscionable terms in a patent license/settlement are matters Congress redresses with the antitrust laws;
 - (d) there is a high degree of directness between the anticompetitive injuries suffered by Array and violations of the title 15 USC §§1 and 2;
 - (e) appropriate damages to redress the anticompetitive actions of Safoco are not speculative; and,
 - (f) the risk of duplicate recoveries is not great.

**COUNT IV
INJUNCTIVE RELIEF
(For injunctive relief under the Clayton Act, 15 U.S.C. §26)**

- 75. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-74.

76. Array is entitled to injunctive relief suspending enforcement of the Settlement Agreement between Safoco and Array pending a trial on the matter. There is a substantial likelihood of success on the merits as Safoco's licensing terms and conduct is illegal. Array will suffer irreparable harm if the injunction is not granted by at least being bound by an illegal and improper Settlement Agreement. The injunction would not substantially harm any other interested party but rather return competition to the market thereby benefiting all other interested parties. Finally, the issuance of an injunction will serve the public interest by enforcing the antitrust provisions of the United States Code.

**COUNT V
FALSE PATENT MARKING**

77. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-76.

78. On or about December 14, 2005, Array and Safoco entered into an alleged Settlement Agreement, the explicit terms of which Safoco required to be kept confidential with an exception for disclosures of the general scope.

79. The general scope of the agreement requires Array to mark its APD, APP, and APH actuator products ("Marked Array Products") with the numbers of the Safoco Patents, regardless of whether the scope of the claims of the Safoco Patents cover the Marked Array Products.

80. Array has marked certain of its products, albeit, unwillingly, but by the terms of the Settlement Agreement offered by Safoco to Array Products, L.L.C. with the numbers of the Safoco Patents. However, the scope of the claims of the Safoco Patents do not cover the Marked Array Products and therefore the patent marking is unlawful and against public policy. Therefore, Array has suffered a competitive injury as a result of the patent mismarking.

81. Safoco had actual knowledge that the scope of the claims of the Safoco Patents did not cover the Marked Array Products because an Examiner at the USPTO clearly defined the scope of the Safoco Patents during the prosecution of the Safoco Patents.

82. Array has been damaged by marking its products with the numbers of the Safoco Patents by at least the cost of compliance with the marking and the diminished value to Array's products. An appropriate measure of damages to compensate is the licensing fees paid by Array to Safoco pursuant to the Settlement Agreement and All costs of compliance

83. Additionally, Safoco is liable to Array for a trebling of the damages as Safoco knew or should have known that the scope of the Safoco Patents did not cover the Marked Array Products.

84. Additionally, Safoco is liable to Array for punitive damages as Safoco knew or should have known that the scope of the Safoco Patents did not cover the Marked Array Products.

85. Additionally, Safoco is liable to Array for costs of this lawsuit as Safoco knew or should have known that the scope of the Safoco Patents did not cover the Marked Array Products.

**COUNT VI
DECLARATION THAT ARBITRATION CLAUSE OF THE SETTLEMENT
AGREEMENT WAS FRAUDULENTLY INDUCED**

86. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-85.

87. The general scope of the Settlement Agreement between Safoco and Array contains an arbitration clause.

88. Array was fraudulently induced by Safoco to agree to the arbitration provision in the Settlement Agreement through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein.

89. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Safoco fraudulently induced Array to agree to the arbitration clause in the Settlement Agreement, thereby declaring that the arbitration provision of the Settlement Agreement is void.

**COUNT VII
DECLARATION THAT THE SETTLEMENT AGREEMENT
WAS FRAUDULENTLY INDUCED**

90. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-89.

91. The general scope of the Settlement Agreement between Safoco and Array contains anticompetitive terms and illegal terms.

92. Array was fraudulently induced by Safoco to agree to the Settlement Agreement through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein.

93. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Safoco fraudulently induced Array to agree to the Settlement Agreement, thereby declaring the Settlement Agreement void.

**COUNT VIII
DECLARATION THAT ARBITRATION CLAUSE OF THE SETTLEMENT
AGREEMENT WAS ENTERED INTO UNDER DURESS**

94. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-93.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ARRAY HOLDINGS INC.)	
)	
)	Cause No. 12-cv-366
Plaintiff,)	
v.)	
)	
SAFOCO, INC.,)	
)	JURY DEMAND
Defendant.)	

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Array Holdings Inc. (“Array” or “Plaintiff”) hereby bring this patent related action for antitrust violations, false patent marking, fraudulent inducement and for a declaratory judgment against Safoco, Inc. (“Safoco”) that its Settlement Agreement with Array is void and/or without any legal effect, showing this Court as follows:

In addition, Array seeks, amongst the other claims for relief, declaratory judgment of non-infringement and unenforceability of US 6,089,531¹; US 6,250,605²; US 6,450,477³; US 6,854,704⁴; and, US 7,028,986⁵ (collectively referred to as “the Safoco Patents”).

1 (“the ‘531 Patent”, attached as Exhibit A)

2 (“the ‘605 Patent,” attached as Exhibit B)

3 (“the ‘477 Patent,” attached as Exhibit C)

4 (“the ‘704 Patent,” attached as Exhibit D)

5 (“the ‘986 Patent,” attached as Exhibit E)

95. The general scope of the Settlement Agreement between Safoco and Array contains anticompetitive terms and illegal terms.

96. Array was induced under duress by Safoco to agree to the arbitration clause in the Settlement Agreement through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein. The duress was of such a nature and magnitude that Array agreed to the arbitration clause in the Settlement Agreement based on the representations made by Safoco. However, Safoco knew that the Safoco Patents were unenforceable and that the scope of the claims of the Safoco Patents did not cover the Subject Array Actuators. Absent the duress created by Safoco, Array would not have entered into the Settlement Agreement with the arbitration clause.

97. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Safoco induced Array under duress to agree to the arbitration clause in the Settlement Agreement, thereby declaring the arbitration clause in the Settlement Agreement void and without effect.

**COUNT IX
DECLARATION THAT THE SETTLEMENT AGREEMENT
WAS ENTERED INTO UNDER DURESS**

98. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-97.

99. The general scope of the Settlement Agreement between Safoco and Array contains anticompetitive terms and illegal terms.

100. Array was induced under duress by Safoco to agree to the Settlement Agreement through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described

herein. The duress was of such a nature and magnitude that Array agreed to the Settlement Agreement based on the representations made by Safoco. However, Safoco knew that the Safoco Patents were unenforceable and that the scope of the claims of the Safoco Patents did not cover the Subject Array Actuators. Absent the duress created by Safoco, Array would not have entered into the Settlement Agreement.

101. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Safoco induced Array under duress to agree to the Settlement Agreement, thereby declaring the Settlement Agreement void and without effect.

**COUNT X
DECLARATION THAT PLAINTIFFS' ANTITRUST
CLAIMS ARE NOT SUBJECT TO ARBITRATION**

102. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-101.

103. Plaintiff's claims under Title 15 of the United States Code are not subject to the arbitration clause.

104. Array never intended for Title 15 claims to be subject to the arbitration clause.

105. On information and belief, Safoco never intended for Title 15 claims to be subject to the arbitration clause.

106. Array's Title 15 claims do not arise from or relate to the Settlement Agreement and therefore are not subject to the arbitration clause.

107. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Array's Title 15 claims do not arise out of or relate to the Settlement Agreement and therefore are not subject to arbitration.

COUNT XI
DECLARATORY RELIEF THAT THE SETTLEMENT AGREEMENT IS
UNENFORCEABLE AS AGAINST PUBLIC POLICY

108. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-107.

109. An agreement is against public policy if it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with the public welfare or safety, or is at war with the interests of society or is in conflict with the morals of the time.

110. The Settlement Agreement is against public policy because it is injurious to the interests of the public, contravenes established interests of society related to anticompetitive behavior, violates some public statute, is against good morals, tends to interfere with the public welfare and safety, and is at war with the interests of society and is in conflict with the morals of the time.

111. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Settlement Agreement between Array and Safoco is void and without effect as against public policy.

COUNT XII
NON-INFRINGEMENT OF THE '531 PATENT

112. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-111.

113. The Subject Array Actuators do not infringe and have not infringed, either directly or indirectly, any claim of the '531 Patent under 35 U.S.C. § 271.

114. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Subject Array Actuators do not infringe any claim of the '531 Patent under 35 U.S.C. § 271.

**COUNT XIII
UNENFORCEABILITY OF THE '531 PATENT**

115. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-114.

116. The claims of the '531 patent are unenforceable through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein.

117. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the claims of the '531 patent are unenforceable.

**COUNT XIV
NON-INFRINGEMENT OF THE '605 PATENT**

118. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-117.

119. The Subject Array Actuators do not infringe and have not infringed, either directly or indirectly, any claim of the '605 Patent under 35 U.S.C. § 271.

120. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Subject Array Actuators do not infringe any claim of the '605 Patent under 35 U.S.C. § 271.

**COUNT XV
UNENFORCEABILITY OF THE '605 PATENT**

121. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-120.

122. The claims of the '605 Patent are unenforceable through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein.

123. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the claims of the '605 patent are unenforceable.

**COUNT XVI
NON-INFRINGEMENT OF THE '477 PATENT**

124. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-123.

125. The Subject Array Actuators do not infringe and have not infringed, either directly or indirectly, any claim of the '477 Patent under 35 U.S.C. § 271.

126. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Subject Array Actuators do not infringe any claim of the '477 Patent under 35 U.S.C. § 271.

**COUNT XVII
UNENFORCEABILITY OF THE '477 PATENT**

127. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-126.

128. The claims of the '477 Patent are unenforceable through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein.

129. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the claims of the '477 patent are unenforceable.

**COUNT XVIII
NON-INFRINGEMENT OF THE '704 PATENT**

130. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-129.

131. The Subject Array Actuators do not infringe and have not infringed, either directly or indirectly, any claim of the '704 Patent under 35 U.S.C. § 271.

132. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Subject Array Actuators do not infringe any claim of the '704 Patent under 35 U.S.C. § 271.

**COUNT XIX
UNENFORCEABILITY OF THE '704 PATENT**

133. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-132.

134. The claims of the '704 Patent are unenforceable through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein.

135. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the claims of the '704 patent are unenforceable.

**COUNT XX
NON-INFRINGEMENT OF THE '986 PATENT**

136. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-135.

137. The Subject Array Actuators do not infringe and have not infringed, either directly or indirectly, any claim of the '986 Patent under 35 U.S.C. § 271.

138. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the Subject Array Actuators do not infringe any claim of the '986 Patent under 35 U.S.C. § 271.

**COUNT XXI
UNENFORCEABILITY OF THE '986 PATENT**

139. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above in paragraphs 1-138.

140. The claims of the '986 patent are unenforceable through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct as described herein.

141. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Safoco and Array of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the claims of the '986 patent are unenforceable.

JURY TRIAL DEMAND

Array demands trial by jury on all issues triable by a jury in this case.

PRAYER FOR RELIEF

Array Holdings Inc. respectfully prays for all available relief under the law and in equity based upon the claims herein contained. Specifically, Array Holdings Inc. prays for:

- a. damages sufficient to compensate for Safoco, Inc.'s violation of 15 U.S.C §1 (conspiracy and tying) at least equal to the license fees paid by Array to Safoco;
- b. attorney's fees and costs for Safoco, Inc.'s violation of 15 U.S.C §1;
- c. a trebling of the damages for Safoco, Inc.'s violation of 15 U.S.C §1;
- d. damages sufficient to compensate for Safoco, Inc.'s violation of 15 U.S.C §2 (acquisition of a monopoly) at least equal to the license fees paid by Array to Safoco;
- e. attorney's fees and costs for Safoco, Inc.'s violation of 15 U.S.C §2;
- f. a trebling of the damages for Safoco, Inc.'s violation of 15 U.S.C §2;
- g. damages sufficient to compensate for Safoco, Inc.'s violation of 15 U.S.C §2 (attempted acquisition of a monopoly) at least equal to the license fees paid by Array to Safoco;
- h. attorney's fees and costs for Safoco, Inc.'s violation of 15 U.S.C §2;
- i. a trebling of the damages for Safoco, Inc.'s violation of 15 U.S.C §2;
- j. injunctive relief under the Clayton Act to stop Safoco's anticompetitive behavior and suspend the Settlement Agreement pending a jury trial on the merits;

- k. damages sufficient to compensate for Safoco, Inc.'s false patent marking at least equal to the license fees paid by Array to Safoco;
- l. attorney's fees and costs for Safoco, Inc.'s patent marking violation;
- m. an award of punitive damages for Safoco's false marking; and,
- n. a declaration from the Court that:
 - 1. the arbitration clause in the Settlement Agreement was fraudulently induced;
 - 2. the Settlement Agreement was fraudulently induced;
 - 3. the arbitration clause in the Settlement Agreement was induced under duress;
 - 4. the Settlement Agreement was induced under duress;
 - 5. Array's Title 15 claims are not subject to arbitration;
 - 6. the Settlement Agreement is unenforceable as against public policy;
 - 7. Array does not infringe any of the claims of the '531 patent, the '605 patent, the '477 patent, the '704 patent or the '986 patent; and,
 - 8. the '531 patent, the '605 patent, the '477 patent, the '704 patent or the '986 patent are unenforceable through Safoco's illegal, unconscionable, sham litigation and anticompetitive conduct.

Respectfully submitted,
Ramey & Browning, PLLC

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INTRODUCTION AND BACKGROUND

1. Along with its affiliates, Array comprises one of the world's leading manufacturers and distributors of gate valves, actuators and other flow control products for oil & natural gas wellhead, manifold, fracture and distribution applications as well as ball valves for distribution, refining, petrochemical and mining applications.
2. On information and belief, Safoco has and continues to provide actuators targeted primarily to the oil and gas industry.
3. On information and belief, since at least 2005, a large portion of Safoco's primary business operations have been licensing patents for revenue, including the Safoco Patents.
4. On information and belief, Safoco is the owner by assignment of the '531 Patent, which is entitled "Valve actuator apparatus," and which issued at 12:00 AM Eastern Standard Time on July 18, 2000, by the United States Patent and Trademark Office ("USPTO"). The '531 Patent identifies Terry Young as its inventor.
5. On information and belief, Safoco is the owner by assignment of the '605 Patent, which is entitled "Valve actuator apparatus," and which issued at 12:00 AM Eastern Standard Time on June 26, 2001, by the United States Patent and Trademark Office ("USPTO"). The '605 Patent identifies Terry Young as its inventor.
6. On information and belief, Safoco is the owner by assignment of the '477 Patent, which is entitled "Valve actuator apparatus," and which issued at 12:00 AM Eastern Standard Time on September 17, 2002, by the United States Patent and Trademark Office ("USPTO"). The '477 Patent identifies Terry Young as its inventor.

7. On information and belief, Safoco is the owner by assignment of the '704 Patent, which is entitled "Valve actuator apparatus," and which issued at 12:00 AM Eastern Standard Time on February 15, 2005, by the United States Patent and Trademark Office ("USPTO"). The '704 Patent identifies Terry Young as its inventor.

8. On information and belief, Safoco is the owner by assignment of the '986 Patent, which is entitled "Valve actuator apparatus," and which issued at 12:00 AM Eastern Standard Time on April 18, 2006, by the United States Patent and Trademark Office ("USPTO"). The '986 Patent identifies Terry Young as its inventor.

9. Each of the Safoco Patents has a common specification and relates to valve actuators used for the control of a gate valve.⁶

10. Each of the '531 patent, the '605 patent, and the '477 patent have been the subject of a patent reexamination. After amendment, each of the '531 patent, the '605 patent, and the '477 patent eventually issued from the reexamination after substantial further prosecution history.

MARKET DEFINITIONS

11. Plaintiff Array on behalf of itself, based on information and belief, and investigation of counsel, except for information pertaining to the named Plaintiff, which is based on their personal knowledge, alleges as follows:

12. Safoco, Inc. ("Safoco" or "Defendant") owns the Safoco Patents and operates a manufacturing operation for commercializing actuators, in the Subject Actuator Market, allegedly covered by the scope of the claims of the Safoco Patents. Safoco's website can be found at www.safoco.com.

⁶ The gate valve controls the flow of fluids.

13. The “Subject Actuator Market” is defined as the market for actuators in the oil & natural gas wellhead, manifold, fracture and distribution applications that Safoco alleges are within the scope of the claims of the Safoco Patents. Accordingly, the relevant product markets include the oil & natural gas wellhead market, the manifold market, the fracture market and the distribution applications market (“Products Market”).

14. Safoco has market power in the Subject Actuator Market taking into consideration Safoco’s licensing strategy, the Safoco Patents, and Safoco’s products, Safoco has, on information and belief, an approximately 60% market share of the Subject Actuator Market. However, the Safoco Patents are a primary reason why Safoco has its market position and power. Further, Safoco’s licensing techniques are such that consumers in the industry assume Safoco has market power.

15. Consumers and merchants have come to recognize the Subject Actuator Market as a separate and distinct market from the pipeline and flow control market.

16. Barriers to entry into the Subject Actuator Market are high. In addition the barriers to entry into the Subject Actuator Market imposed by Safoco’s illegal anticompetitive behavior, discussed in detail herein, other barriers to entry include the fact that: (1) the development of intellectual property around any new product takes many years; (2) any new product takes time to gain market acceptance; and, (3) any new entrant would have to offer an inventory of actuators, necessitating (in addition to the patent license requirement), an inordinate investment of capital and resources.

17. The Subject Actuator Market offers a number of features not readily available with other actuators, including, but not limited to:

- a. Longer Top Shaft Seal Life;

- b. Ease of Maintenance with the ability to remove the operator assembly in one piece while leaving the gate valve closed;
 - c. Improved Corrosion Control;
 - d. Over-pressurization Protection;
 - e. Confirmation of Bonnet Stem / Back Seat Seal Integrity;
 - f. Visual Confirmation of Bonnet Packing Integrity;
 - g. Modular Design; and,
 - h. Multiple Safeguards Against Well Fluids Contamination.
18. The relevant geographic market for the Subject Actuator Market is the United States.
19. Safoco has and is engaged in tying and monopolizing behavior, placing unneeded and unjustifiable licensing terms and restrictions on its actuator products and the Safoco Patents in an effort to restrict consumer choice and restrain competition in the Products Market and Subject Actuator Market.
20. As alleged in further detail below, Safoco deliberately prohibits competition with its actuator products through anticompetitive contract terms that stifle innovation and interfere with commerce to such an extent that Safoco can and does sell its actuator products at prices far above those that would prevail in a competitive market for actuators.

SAFOCO'S ANTICOMPETITIVE ENFORCEMENT ACTIONS

21. Safoco has engaged in a course of conduct that shows a willingness to enforce its patents through litigation in an anticompetitive nature.
22. Safoco has previously filed sham litigation lawsuits against numerous manufacturers and/or consumers in the marketplace, including at least Cooper Cameron Corporation and Array Products, L.L.C. alleging infringement of one or more of the claims of the Safoco Patents.

Safoco had actual knowledge that the scope of the claims of the Safoco Patents did not cover the actuators sold by Array Products, L.L.C. from at least the prosecution history of the Safoco Patents.

23. Further, on information and belief, Safoco has filed sham litigation lawsuits and/or threatened to file sham litigation lawsuits against other manufacturers and/or consumers in the market alleging infringement of one or more of the claims of the Safoco Patents.

24. Safoco has offered to settle its sham litigation claims of infringement against the numerous manufacturers and/or consumers in the marketplace through a settlement agreement that imposes restrictions in violation of the antitrust provisions of Title 15 of the United States Code.

25. Namely, on information and belief, the general scope of the terms of the settlement agreement offered by Safoco to the numerous manufacturers and/or consumers contain terms requiring the numerous manufacturers and/or consumers to pay a license fee for the Safoco Patents regardless of whether the scope of the claims of the Safoco Patents cover the actuators of the numerous manufacturers and/or consumers. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

26. Further, on information and belief, the general scope of the terms of the settlement agreement offered by Safoco to the numerous manufacturers and/or consumers prohibit the numerous manufacturers and/or consumers from selling, renting or leasing any actuator designed and/or determined to be outside the scope of the claims of the Safoco Patents without paying a license fee to Safoco. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

27. Further, on information and belief, the general scope of the terms of the settlement agreement offered by Safoco to the numerous manufacturers and/or consumers prohibit the numerous manufacturers and/or consumers from selling, renting or leasing any actuator that is outside the scope of the claims of the Safoco Patents or Safoco IP, without paying a license fee to Safoco. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

28. Further, on information and belief, the general scope of the terms of the settlement agreement offered by Safoco to the numerous manufacturers and/or consumers requires paying a license fee to Safoco for worldwide sales, rentals and leases, regardless of the fact of whether the Safoco Patents have worldwide coverage. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

29. Further, on information and belief, the general scope of the terms of the settlement agreement offered by Safoco to the numerous manufacturers and/or consumers require patent marking regardless of whether the scope of the claims of the Safoco Patents covers the product. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to require such marking.

30. Further, the general scope of the terms of the Settlement Agreement offered by Safoco to Array contain terms requiring Array to pay a license fee for the Safoco Patents regardless of whether the scope of the claims of the Safoco Patents cover Array's products. Array Products, L.L.C. did not have an opportunity to properly investigate the representations made by Safoco that Array Products, L.L.C.'s Model APD Diaphragm Pneumatic Actuator, Model APP Piston Pneumatic Actuator, and Model APH Piston Hydraulic Actuator ("Subject Array Product Actuators") infringe one or more claims of each of the Safoco Patents. The issue was never

litigated. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

31. Further, the general scope of the terms of the Settlement Agreement offered by Safoco to Array prohibit Array from selling, renting or leasing any actuator designed and/or determined to be outside the scope of the claims of the Safoco Patents without paying a license fee to Safoco. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

32. Further, the general scope of the terms of the Settlement Agreement offered by Safoco to Array prohibits Array from selling, renting or leasing any actuator that is outside the scope of the claims of the Safoco Patents or Safoco IP, without paying a license fee to Safoco. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

33. Further, the general scope of the terms of the Settlement Agreement offered by Safoco to Array requires paying a license fee to Safoco for worldwide sales, rentals and leases, regardless of the fact of whether the Safoco Patents have worldwide coverage. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to charge such a usurious license fee.

34. Further, the general scope of the terms of the Settlement Agreement offered to Array requires patent marking with the numbers of the Safoco Patents regardless of whether the scope of the claims of the Safoco Patents covers the Subject Array Actuators. There is no basis in the settlement agreement offered by Safoco or the Law that would allow it to require such marking.

35. Regardless of the Settlement Agreement and its provisions, the products Array presently sells, rents and leases identified as Model APD Diaphragm Pneumatic Actuator, Model APP